

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 9/23/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carol Fisch,

Complainant,

vs.

Garrapata Water Co., Inc.,

Defendant.

Case 00-03-017
(Filed March 9, 2000)

**OPINION GRANTING IN PART AND DENYING IN PART
PETITION FOR MODIFICATION OF DECISION 01-04-013**

Summary

We grant the petition for modification of Decision (D.) 01-04-013 (petition) filed by Carol Fisch (Fisch), in part, and modify Finding of Fact 13 of that decision to more accurately reflect the record. The modification does not materially affect our holding that Fisch and Garrapata Water Co., Inc. (Garrapata) should share, equally, the costs of repairs to the water line that serves her property. For consistency, we also modify Finding of Fact 18 of D.01-04-013. In all other respects we deny the petition.

Background

The presiding officer's decision (POD) in this case was mailed to the parties on March 9, 2001 and became the decision of this Commission, D.01-04-013, when no party filed an appeal under Pub. Util. Code § 1701.2(a).

D.01-04-013 finds that Fisch's property is within Garrapata's service area but that the water line that spans Garrapata Creek to serve that property (and that has served that property for several decades) is essentially a jerrybuilt, nonstandard affair that does not comply with the Tariff Rule 15 main extension requirements contained within Tariff Rule 16. D.01-04-013 assigns responsibility for outstanding and future repairs to the water line equally between Fisch and Garrapata.

Approximately one year later, on April 9, 2002, Fisch filed the instant petition. The petition is the same document, entitled "Response to Opinion Resolving Complaint," that Fisch attempted to file previously during the POD's appeal period. Though Fisch was represented by counsel in the evidentiary hearing that resulted in D.01-04-013, she prepared the document at issue in propria persona. The Docket Office rejected the attempted filing because the document, by its own admission, is not an appeal. Its first and second paragraphs state:

I wish to commend the ALJ on a decision, which I believe is reasonable and which keeps the interest of the Garrapata Water Company customers in mind.

I do not wish to appeal the ruling, however I feel it necessary to request that certain of findings of fact be corrected to reflect the facts as they are and as presented and corroborated by expert witness, Grover Meyrose, in the hearing of September 20.
(Emphasis added.)

Fisch appended a new cover sheet to the rejected document and filed it as the instant petition. Garrapata filed a response on May 7, 2002 that opposes the petition.

Discussion

Rule 47 of the Commission's Rules of Practice and Procedure, which governs petitions for modification, explains that a petition "asks the Commission to make changes to the text of an issued decision." (Rule 47(a).) A petition "must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications of the decision." (Rule 47(b).) Fisch's petition nominally meets these directives and we proceed to review its merits.

While the petition devotes a number of pages to reargument of other portions of the record, the only specific relief Fisch requests is modification of Finding 13.¹ Fisch claims this finding does not accurately reflect the testimony. Garrapata argues that Fisch, herself, misunderstands the record and merely seeks to advantage her position in a pending civil lawsuit between the parties.

Finding 13 states: "Approximately one half of the water line is located on Fisch's property (to the mid-point of Garrapata Creek); the rest is located on property Fisch does not own."

The record establishes that the midpoint of Garrapata Creek marks the approximate midpoint of the water line that connects Fisch's property (north of Garrapata Creek) with the Garrapata system (located south of Garrapata Creek). Fisch does not dispute these facts. She contends, however, that the testimony of her expert, Meyrose, shows that only 100 feet of the water line north of Garrapata Creek actually is on her property and that the rest is located within various portions of the Highway 1 right of way. Fisch is technically correct that the

¹ While the petition also discusses Finding 12 at length, Fisch concedes that it is accurate. Finding 12 states: "The water line serves only Fisch's property."

record places part of the water line north of Garrapata Creek outside the boundaries of her property. In that regard, Finding of Fact 13 is erroneous and we will correct it. The correction has no material effect on our holding in D.01-04-013 that Fish and Garrapata should share the costs of maintenance of the nonstandard water line since the utility has no easements north of Garrapata Creek. To accurately reflect the record, Finding of Fact 13 should be revised to state:

Approximately one half of the water line, north of the midpoint of Garrapata Creek, is located on Fisch's property or adjacent to Fisch's property; the rest is located on property south of the midpoint of Garrapata Creek that Fisch does not own.

Since the first sentence of Finding of Fact 18 reiterates Finding of Fact 13, it also should be corrected.

Assignment of Proceeding

The assigned Commissioner is Commissioner Duque, and the assigned Administrative Law Judge (ALJ) is ALJ Vieth.

Comments on Draft Decision

The draft decision of the ALJ was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. The only specific relief Fisch requests is modification of Finding 13 of D.01-04-013.
2. The record establishes that the midpoint of Garrapata Creek marks the approximate midpoint of the water line that connects Fisch's property (north of Garrapata Creek) with the Garrapata system (located south of Garrapata Creek).
3. Fisch is technically correct that the record places part of the water line north of Garrapata Creek outside the boundaries of her property.

Conclusions of Law

1. The petition nominally complies with Rule 47.
2. The petition should be granted to modify Finding of Fact 13 of D.01-04-013, as provided in Ordering Paragraph 2 of this order.
3. Modifying Finding of Fact 13 of D.01-04-013, as provided in Ordering Paragraph 2 of this order, has no material effect on the holding of D.01-04-013.
4. Finding of Fact 18 of D.01-04-013 should be modified for consistency with Finding of Fact 13 of that decision.
5. In order to provide certainty to the parties regarding the status of service to Fisch's property and responsibility for repair of the water line, this decision should be effective immediately.

O R D E R**IT IS ORDERED** that:

1. The petition for modification of Decision (D.) 10-04-013, filed on April 9, 2002, by Carol Fisch is granted to the extent provided in Ordering Paragraphs 2 and 3 and otherwise is denied.
2. Finding of Fact 13 of D.10-04-013 is modified as follows (additions are indicated by italics and deletions are indicated in strikethrough format):

“Approximately one half of the water line, *north of the midpoint of Garrapata Creek*, is located on Fisch's property ~~(to the midpoint of Garrapata Creek)~~ or adjacent to Fisch's property; the rest is located on property *south of the midpoint of Garrapata Creek* that Fisch does not own.”
3. Finding of Fact 18 of D. 10-04-013 is modified as follows (additions are indicated by italics):

“*Approximately one half of the water line, north of the midpoint of Garrapata Creek, is located on Fisch's property or adjacent to Fisch's*

property; the rest is located on property south of the midpoint of Garrapata Creek that Fisch does not own. The record does not reflect whether anyone holds an easement for the water line route

between the southern border of Fisch's property and the point, further south, where it enters the utility easement along Highway 1."

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.